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No. 00-1307

In the Supreme Court of the United States

LARRY G. MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY, PETITIONER

v.

SIGMON COAL COMPANY, INC., AND JERICOL MINING, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

The Coal Industry Retiree Health Benefit Act of 1992 (Coal Act), 26 U.S.C. 9701 *et seq.*, established the United Mine Workers of America Combined Benefit Fund (Combined Fund) to ensure the continued provision of health-care benefits to retired miners (and the dependents of miners) who worked under collective bargaining agreements that promised lifetime health-care benefits. For the purpose of calculating premiums to be paid to the Fund to finance those health-care benefits, the Coal Act directs the Commissioner of Social Security to assign responsibility for beneficiaries of the Fund to the "signatory operator" or "related person" of the signatory operator that formerly employed the miners, if that signatory operator (or related person) is still "in business." 26 U.S.C. 9706(a).

The question presented is whether the Coal Act permits the Commissioner to assign beneficiaries to the successor in interest of a signatory operator that is no longer in business.

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-44a) is reported at 226 F.3d 291. The opinion and order of the district court (Pet. App. 63a-64a, 65a-78a) are reported at 33 F. Supp. 2d 505. The order of the district court denying the government's motion for reconsideration (Pet. App. 79a-80a) is unreported. Orders of the Social Security Administration affirming the assignment of responsibility for various individuals to respondents (Pet. App. 45a-62a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 29, 2000. A petition for rehearing was denied on

November 15, 2000 (Pet. App. 81a-82a). The petition for a writ of certiorari was filed on February 13, 2001, and was granted on April 23, 2001. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

The pertinent provision of the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701(c)(2)(A), is reprinted in an appendix to this brief (App., *infra*, 1a), and at p. 9, *infra*.

STATEMENT

1. a. Congress enacted the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act or Act), 26 U.S.C. 9701 *et seq.*, in response to a crisis that threatened to deprive more than 100,000 retired coal miners and their dependents of promised lifetime health-care benefits. Before enactment of the Coal Act, the health-care benefits of many retired coal miners were financed through multiemployer trusts established by collective bargaining agreements, known as National Bituminous Coal Wage Agreements (NBCWAs), between the United Mine Workers of America (UMWA) and the Bituminous Coal Operators Association (BCOA). The NBCWA executed in 1974 provided that the health-care benefits of all active miners and those who retired in 1976 or later would be provided through the multiemployer UMWA 1974 Benefit Plan and Trust (1974 Benefit Plan), and the benefits of miners who retired before 1976 would be provided through the UMWA 1950 Benefit Plan and Trust (1950 Benefit Plan). The NBCWA executed in 1978 altered this arrangement; under the 1978 NBCWA, coal mine operators who were signatories to the NBCWAs (known as "signatory operators") individually provided for the health-care benefits of their own active and retired employees, while the 1974 Benefit Plan thenceforth covered those retirees whose employers were no longer in business. See generally

Eastern Enters. v. *Apfel*, 524 U.S. 498, 504-511 (1998) (plurality opinion).[1]

In the 1980s and 1990s, the financial stability of the trusts was seriously threatened. A principal cause of the peril was that many coal operators were withdrawing from unionized operations and the coverage of the NBCWAs, or were going out of business altogether. "As more and more coal operators abandoned the Benefit Plans, the remaining signatories were forced to absorb the increasing cost of covering retirees left behind by exiting employers. A spiral soon developed, with the rising cost of participation leading more employers to withdraw from the Benefit Plans, resulting in more onerous obligations for those that remained." *Eastern*, 524 U.S. at 511.

After a protracted strike at the Pittston Coal Company in 1989, in which health-care benefits were a principal issue, the Secretary of Labor established an advisory commission (the Coal Commission) to report on the causes of the financial crises in the Benefit Plans and to suggest solutions. The Coal Commission reported that a principal problem facing the Plans was how to finance the health-care benefits of "orphaned retirees," *i.e.*, those retired miners whose former employers had gone out of business or had ceased contributing to the Benefit Plans, thus "dumping" responsibility for the orphans onto the signatory operators who remained in the NBCWA system. See *Coal Commission Report on Health Benefits of Retired Coal Miners: Hearing Before the Subcomm. on Medicare and Long-Term Care of the Senate Comm. on Finance*, 102 Cong., 1st Sess. 145 (1991). The Coal Commission was unable to reach a consensus on the mechanism for resolving the financial crisis; some members preferred a financial obligation imposed on the entire coal

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[1] Unless otherwise indicated, all references in this brief to the *Eastern* decision are to Justice O'Connor's plurality opinion.

industry (including operators who were never members of the BCOA), whereas others preferred that any obligation be confined to those who had participated in the NBCWA system. Compare *id.* at 226-232 with *id.* at 236-239. Both groups, however, recognized that much of the problem was caused by the fact that coal mine operators who had previously participated in the NBCWA system had avoided their obligations and shifted responsibility for their retirees onto other signatory operators by going out of business and transferring their assets to other entities. Professor Henry H. Perritt, who was Vice Chairman of the Coal Commission and favored an industry-wide solution, thus observed:

> Contract operations are a strong phenomenon in coal mining, as are thinly capitalized subsidiaries. It is not uncommon for a contract operator or a thinly capitalized subsidiary or joint venture to walk away from obligations to finance retiree health care. Frequently entities who now appear not to have had any historic involvement with the [UMWA] Funds were in fact involved as contributors of capital, as participants in joint ventures or as purchasers of contract coal. It is difficult to know whose hands are clean.

Id. at 229. Other members of the Commission agreed with Professor Perritt's understanding of the causes of the Benefit Plans' financial problems (although they nonetheless opposed an industry-wide tax):

> The record shows that reprehensible practices as regards successorship exist in this industry. Thinly capitalized operators, often the sham invention of larger firms, come and go in a fashion that appears to exist only to avoid the risk of being held as a party to the collectively bargained agreement regarding pension and welfare benefits.

Id. at 237.

b. After extensive consideration, Congress decided not to impose an industry-wide tax to shore up the financial stability of the Benefit Plans, but decided instead to ensure that the obligations of operators who had participated in the NBCWA system to their retirees were not avoided through the kinds of practices decried by the Coal Commission.[2] Congress's objectives in enacting the Coal Act were to "identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to [coal industry] retirees," to "allow for sufficient operating assets for [coal industry retiree health-care benefit] plans," and to "provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans." Energy Policy Act of 1992, Pub. L. No. 102-486, § 19142, 106 Stat. 3037.

In furtherance of those ends, the Coal Act established the United Mine Workers of America Combined Benefit Fund (Combined Fund or Fund) as a private multiemployer health benefit plan.[3] See 26 U.S.C. 9702(a). The Combined Fund

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[2] Both Houses of Congress initially passed a bill that would have provided for orphan retirees' benefits through taxes on coal production and imports. The President vetoed that bill, however, and the financing provisions of the Coal Act eventually took a different form. See *Eastern*, 524 U.S. at 513-514; pp. 33-34 n.11, *infra*.

[3] The Coal Act also established another private fund, the 1992 UMWA Benefit Plan (1992 Plan), which is not at issue here. The 1992 UMWA Benefit Plan is intended to provide health-care benefits for retired miners who would have met the age and service requirements under the 1950 and 1974 Plans as of February 1, 1993, who retired between July 21, 1992, and September 30, 1994, and whose last signatory operator did not provide the health-care benefits promised under a 1978 or later NBCWA. See 26 U.S.C. 9712(b); 138 Cong. Rec. 34,004 (1992) (explanation by Sen. Wallop).

provides health-care benefits to beneficiaries who, at the time of passage of the Act, were receiving, or were eligible to receive, benefits from the 1950 or 1974 Benefit Plan. See 26 U.S.C. 9702(a)(2), 9703(a) and (f). The Combined Fund is financed by premiums to be paid by the "signatory operator[s]" (or "related person[s]" of those signatory operators) that formerly employed the beneficiaries and that remain "in business." 26 U.S.C. 9704, 9706(a). The Act generally defines "signatory operator" as "a person which is or was a signatory to a coal wage agreement," 26 U.S.C. 9701(c)(1), including the NBCWAs negotiated between the UMWA and the BCOA, 26 U.S.C. 9701(b)(1).

The Act vests in the Commissioner of Social Security (Commissioner)[4] the responsibility for assigning eligible Combined Fund beneficiaries (miners and their surviving spouses and dependents) to signatory operators or related persons. 26 U.S.C. 9706(a). Assignments are made according to a three-tiered hierarchy:

First, the Commissioner must seek to assign a beneficiary to the "signatory operator" (or "related person") that remains "in business," signed a collective bargaining agreement with the UMWA in 1978 or later, and was the most recent signatory operator to employ the miner in the coal industry for at least two years. 26 U.S.C. 9706(a)(1). The Act specifies that "a person shall be considered to be in business if such person conducts or derives revenue from

[4] Many references in the legislative record are to the Department of Health and Human Services, which at the time included the Social Security Administration. In 1995, the Social Security Administration became an independent agency within the Executive Branch, and the Commissioner of Social Security assumed the duties of the Secretary of Health and Human Services under the Coal Act. See Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, § 108(h)(9)(A), 108 Stat. 1487.

any business activity, whether or not in the coal industry." 26 U.S.C. 9701(c)(7).

Second, if an assignment of a particular beneficiary cannot be made under the first tier, the Commissioner must attempt to assign the beneficiary to the signatory operator (or related person) that remains in business, signed a collective bargaining agreement with the UMWA in 1978 or later, and was the most recent signatory operator to employ the miner in the coal industry for any period of time. 26 U.S.C. 9706(a)(2).

Third, if an assignment cannot be made under the first or second tier, the Commissioner must seek to assign the beneficiary to the signatory operator (or related person) that remains in business and employed the miner in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 collective bargaining agreement. 26 U.S.C. 9706(a)(3).[5]

[5] In our petition for a writ of certiorari (at 6 n.2), we stated that this case does not involve assignments made under the third tier of Section 9706(a)(3). As respondents have pointed out (Br. in Opp. 4 n.3), that is incorrect; the assignments were in fact made under the third tier. See, *e.g.*, Pet. App. 61a. In *Eastern*, this Court held unconstitutional an application of the Coal Act's third tier, under which the Commissioner had assigned a beneficiary to a coal mine operator that had not signed a collective bargaining agreement with the UMWA in 1974 or later. The Court stressed that the NBCWAs before 1974, unlike those in 1974 and later, did not expressly promise miners health-care benefits for life. See 524 U.S. at 530-531 (plurality opinion); *id.* at 550 (Kennedy, J., concurring in the judgment and dissenting in part).

The assignments at issue in this case were made to a company, respondent Jericol Mining, Inc., that did sign the 1974 NBCWA, which promised miners lifetime benefits. See Pet. App. 11a. Respondents nonetheless alleged, in a "supplemental" complaint, that those assignments were also unconstitutional under *Eastern* because, while the assignee Jericol was a 1974 signatory, Shackleford, the operator that employed the beneficiaries, to whom Jericol was found by the Commissioner to be a successor, was not

Finally, if an assignment cannot be made under any of the three tiers, then the beneficiary is considered "unassigned." See 26 U.S.C. 9704(a)(3) and (d). The health-care benefits of unassigned miners are financed with funds transferred from interest earned on the Department of the Interior's Abandoned Mine Reclamation Fund, 26 U.S.C. 9705(b), or, if that source of funds is exhausted or unavailable, from an additional premium imposed on all assigned signatory operators in a *pro rata* fashion, 26 U.S.C. 9704(d). Congress understood, however, that a principal cause of the crisis in the prior NBCWA system was the cost of financing benefits for "orphan" retirees whose employers had terminated their contribution obligations, and so it intended that the number of unassigned beneficiaries under the Coal Act be kept to "an absolute minimum." 138 Cong. Rec. 34,003 (1992) (explanation by Sen. Wallop).

Because the Commissioner must determine whether a beneficiary can be assigned to either a signatory operator *or*

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a 1974 signatory. See J.A. 13-14. The lower courts did not reach that constitutional question; they ruled rather that the assignments to Jericol were inconsistent with the statute. Pet. App. 73a-78a, 23a-36a. *Eastern* thus is not relevant to the question presented here, which is confined to an issue of statutory construction.

Respondents have recognized (Br. in Opp. 4 n.3) that any constitutional implications under *Eastern* from the third-tier assignment in this case are not properly before this Court, because the lower courts resolved this case solely on statutory-interpretation grounds. Respondents, moreover, did not argue in their brief in opposition that the Court should deny certiorari because the judgment below was independently sustainable on constitutional grounds. Any further litigation of constitutional issues, therefore, should await a remand of this case to the court of appeals. If this Court reverses the court of appeals' ruling and holds that, under the Coal Act, responsibility for a signatory operator's employee may be placed on the direct successor in interest of that operator, then respondents may be able to pursue their *Eastern* claim on remand, provided that the *Eastern* claim was properly preserved in the lower courts.

any related person to a signatory operator under one of the tiers before proceeding to the next tier, the concept of "related person" is central to the operation of the Act. The Act provides an expansive definition of "related person":

> A person shall be considered to be a related person to a signatory operator if that person is—
>
> (i) a member of the controlled group of corporations (within the meaning of [26 U.S.C.] 52(a)) which includes such signatory operator;
>
> (ii) a trade or business which is under common control (as determined under [26 U.S.C.] 52(b)) with such signatory operator; or
>
> (iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.
>
> A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).

26 U.S.C. 9701(c)(2)(A). This definition of "related person" ensures that a signatory operator's beneficiaries are not dumped into the unassigned pool merely because the signatory dissolved its corporate form or drained away its assets. It accomplishes that objective by making affiliates ("related persons") of a signatory operator responsible for Coal Act premiums for a Combined Fund beneficiary if, for some reason, the entity that was the signatory operator itself is unable to pay.

Congress also expressly provided, in the final sentence of Section 9701(c)(2)(A) quoted above, that assignments could

be made to the successor in interest of a "related person" to the signatory operator. The statute does not state *in haec verba* that an assignment may be made to a direct successor in interest of the entity that was the signatory operator itself. The Commissioner has concluded, however, that in light of the text, structure, and purposes of the Coal Act, such direct successors in interest are included within the liability scheme of the statute as well, and should be responsible for a signatory operator's Combined Fund premiums if the signatory operator itself is defunct and if there is no other "related person" to that operator that is still in business. See Social Security Administration Supplemental Coal Act Review Instructions No. 4 (July 1995), Pet. App. 83a-94a. The Commissioner has also concluded that a business should be deemed a successor in interest of a signatory operator or other related person if it has, through purchase, merger, or other transaction, acquired substantial assets from the signatory or its related person, if it continues running the same operation in the same location, and if it uses many of the same employees who worked for the former owner. *Id.* at 86a.

2. a. This case involves financial responsibility for the health-care benefits of 86 beneficiaries of the Combined Fund who were assigned to respondent Jericol Mining Corporation on the ground that Jericol was the successor in interest of the pertinent employer that was a signatory operator.[6] Those 86 beneficiaries are miners (or widows or dependents of miners) who had worked for the Shackleford

[6] None of the pertinent assignments was made to respondent Sigmon Coal Company. The district court stated that Sigmon joined Jericol as a plaintiff in this case because Sigmon is in turn a "related person" to Jericol and thus is jointly and severally liable for premiums owed by Jericol. Pet. App. 66a; see also 26 U.S.C. 9704(a) ("Any related person with respect to an assigned operator shall be jointly and severally liable for any premium required to be paid by such operator.").

Coal Company, a family-owned coal mining company located in Kentucky. In 1973, Irdell Mining, Inc., bought Shackleford's coal mining assets. Pet. App. 10a. The sales contract provided that Irdell would assume responsibility for Shackleford's outstanding contracts, including its collective bargaining agreement with the UMWA. *Ibid.*; J.A. 23, 26. Irdell also acquired the right to use the Shackleford name. J.A. 16. Shortly thereafter, the original Shackleford went out of business. Irdell, however, continued to operate Shackleford's mines under the existing collective bargaining agreement, using the name of Shackleford and using many of the original Shackleford's former employees. Pet. App. 10a-11a. While it was using the Shackleford name, Irdell signed the 1974 NBCWA with the UMWA. *Id.* at 11a.

Irdell eventually adopted the name Jericol Mining Company. Pet. App. 11a. Jericol continued the coal mining operations that it had conducted under the Shackleford corporate name (*ibid.*) and retained the Employer Identification Number it had used to pay Social Security taxes for its employees under the Shackleford name. *Id.* at 48a.

b. In a series of decisions, the Social Security Administration assigned to Jericol 86 Combined Fund beneficiaries who were employed by (or who are widows or dependents of miners employed by) Shackleford. Pet. App. 11a. Jericol filed administrative appeals of those assignment decisions, and the Commissioner denied those appeals on the ground that Jericol is the successor in interest of Shackleford.[7] See

[7] When the Commissioner assigns a Combined Fund beneficiary to a signatory operator or related person, he so notifies the assigned operator, 26 U.S.C. 9706(e)(2), which then has 30 days to request "detailed information as to the work history of the beneficiary and the basis of the assignment," 26 U.S.C. 9706(f)(1). After receiving that information, the assigned operator has an additional 30 days to request review of the assignment decision. 26 U.S.C. 9706(f)(2). If, on review, the Commissioner determines that an assignment was incorrect, he rescinds the

id. at 45a-62a. In a representative decision, the agency explained:

> The sales contract [Jericol] submitted shows that Irdell Mining purchased the assets of Shackleford Coal, that Shackleford Coal was required to maintain the goodwill of its customers, allowed Irdell to use the name of Shackleford after the purchase, transferred responsibility for *all* outstanding contracts and agreements, and required that non-compete agreements be signed and submitted at the time of closing. You have also advised us that Irdell did conduct business under the Shackleford name and subsequently changed the company's name to Jericol Mining.

Id. at 48a-49a. The agency therefore concluded that Jericol is responsible for the Combined Fund premiums for retirees who worked for Shackleford and for their dependents. *Id.* at 49a.

c. Respondents challenged the Commissioner's final administrative decisions in district court. Respondents acknowledged that the Coal Act authorizes the Commissioner to assign responsibility for a Combined Fund beneficiary to a "related person" of the original signatory operator (such as a corporate affiliate of the signatory operator) and also authorizes the Commissioner to assign responsibility to a successor in interest of such a corporate affiliate of a signatory operator. Respondents argued, however, that the Coal Act does not permit the Commissioner to assign responsibility for a beneficiary to the direct successor in interest of a signatory operator itself. The district court

assignment and reviews the beneficiary's record to determine whether the beneficiary should be assigned to another operator. 26 U.S.C. 9706(f)(3)(A). If the Commissioner determines that there was no error in the assignment, he so notifies the assigned operator. 26 U.S.C. 9706(f)(3)(B).

agreed, and granted respondents' motion for summary judgment. Pet. App. 65a-78a.

d. The Commissioner appealed, and a divided panel of the court of appeals affirmed. Pet. App. 1a-44a.

The majority, after determining that the district court had subject-matter jurisdiction over respondents' claims for equitable relief,[8] concluded that the Coal Act did not authorize

[8] In *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 583 (1996), cert. denied, 520 U.S. 1118 (1997), the Fourth Circuit held that Coal Act premiums are "taxes" within the meaning of the Anti-Injunction Act, 26 U.S.C. 7421(a) (1994 & Supp. V 1999), and the tax-exclusion provision of the Declaratory Judgment Act, 28 U.S.C. 2201(a), which generally bar district court jurisdiction over suits seeking declaratory or equitable relief against the collection of "taxes." The Fourth Circuit nonetheless ruled in *Leckie* that a signatory operator in bankruptcy proceedings that had been assigned responsibility for the health-care costs of beneficiaries of the Combined Fund and 1992 Plan could maintain a suit for a declaration that a prospective purchaser of the signatory operator's assets would not be jointly and severally liable for the signatory's obligations to the Combined Fund and 1992 Plan. The Fourth Circuit concluded that the signatory operator would have no other means of obtaining a judicial resolution of that question. See *Leckie*, 99 F.3d at 584-585; see also *Pittston Co.* v. *United States*, 199 F.3d 694, 701-704 (4th Cir. 1999) (relying on *Leckie*'s holding that Coal Act premiums are "taxes" to conclude that a party that has paid Coal Act premiums to the Combined Fund may maintain tax-refund suit against United States to recover those premiums).

In this case, the court of appeals ruled that, although *Leckie* had held that Combined Fund premiums are "taxes," nonetheless the Anti-Injunction Act and Declaratory Judgment Act did not bar respondents' claims for equitable relief against the collection of Coal Act premiums. Pet. App. 17a-23a. The court reasoned (*ibid.*) that the Coal Act establishes procedures specifically intended to permit judicial review under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, of claims that the Commissioner's assignments of beneficiaries under the Coal Act are invalid (see 26 U.S.C. 9706(f)), and that those specific statutory judicial-review provisions prevail over the more general restraints against declaratory and equitable relief set forth in the Anti-Injunction Act and the Declaratory Judgment Act.

We agree that the district court had subject-matter jurisdiction over respondents' claims, but not for the reasons relied on by the court of appeals. In our view, Coal Act premiums are not "taxes" within the meaning of the tax-refund statute, 28 U.S.C. 1346(a)(1), or the bars to declaratory and equitable relief set forth in the Anti-Injunction Act and the Declaratory Judgment Act. Coal Act premiums are not compelled contributions for the support of the government; rather, they are assessed and paid to finance the operations of the UMWA Combined Benefit Fund, a private entity, not those of the United States. See *United States* v. *Butler*, 297 U.S. 1, 61 (1936) ("A tax, in the general understanding of the term, * * * signifies an exaction for the support of the Government. The word has never been thought to connote the expropriation of money from one group for the benefit of another."); *United States* v. *La Franca*, 282 U.S. 568, 572 (1931) ("A tax is an enforced contribution to provide for the support of government."); see also *Eastern*, 524 U.S. at 521 (observing that "[t]he payments mandated by the Coal Act, although calculated by a Government agency, are paid to the privately operated Combined Fund," and so in a taking claim, "Congress could not have contemplated that the Treasury would compensate coal operators for their liability under the Act").

It is therefore the position of the United States that the limitations on declaratory and equitable relief concerning tax liability in the Anti-Injunction Act and the Declaratory Judgment Act (as well as the statutory provisions for tax-refund suits against the United States at issue in *Pittston*) have no application to Coal Act premiums. Rather, respondents' challenge to the Commissioner's assignment decisions, which concern the construction of a federal statute, falls squarely within the district court's federal-question jurisdiction under 28 U.S.C. 1331, and is cognizable under the APA, 5 U.S.C. 704, as a suit for judicial review of final agency action. See also 26 U.S.C. 9706(f)(5) (contemplating "review" of Commissioner's assignment decisions "by a court"). The district court therefore had the attendant authority to issue appropriate equitable relief, without regard to the restrictions imposed by the Anti-Injunction Act and the Declaratory Judgment Act.

The Fourth Circuit's decision in *Leckie* to the effect that Coal Act premiums are "taxes" relied on the decision of the Second Circuit in *In re Chateaugay Corp.*, 53 F.3d 478, 498, cert. denied, 516 U.S. 913 (1995), which held that Coal Act premiums are "taxes" entitled to administrative priority in bankruptcy. See also *Adventure Res., Inc.* v. *Holland*, 137 F.3d 786, 794 (4th Cir.) (adopting same ruling, based on *Leckie* and *Chateaugay*), cert. denied, 525 U.S. 962 (1998). In our view, however, the question whether certain obligatory payments owed to a private party are entitled to priority in the bankruptcy system as "taxes" is quite different from the question whether (as in *Pittston*) a refund suit will lie against the United States to recover payments made to a private party or whether (as in this case) a district court has authority under the APA to adjudicate issues concerning the administrative assignment of beneficiaries that gives rise to the obligation to make those payments. Accordingly, although we believe that Coal Act premiums are not "taxes" under the tax refund statute, the Anti-Injunction Act, or the Declaratory Judgment Act, that does not in our view control the substantive legal question whether those premiums would be entitled to priority in bankruptcy. Cf. *United States* v. *Reorganized CF&I Fabricators of Utah, Inc.*, 518 U.S. 213, 220-224 (1996) (Internal Revenue Code's characterization of a liability as a "tax" does not control whether liability is a "tax" for bankruptcy priority purposes).

the Commissioner to assign Fund beneficiaries to the direct successor in interest of a signatory operator that is no longer in business. The majority first rejected (Pet. App. 24a-26a) the Commissioner's position that the text of the Coal Act permits assignment to the direct successor of an original signatory. The Commissioner had pointed out that Section 9701(c)(2)(A) expressly authorizes assignments to the successor in interest of "any person described" in clause (i), (ii), or (iii) of 26 U.S.C. 9701(c)(2)(A), and had argued that the original signatory operator itself is one of the persons "described" in those clauses because each of the pertinent clauses in turn describes a group or family of related companies that includes the signatory operator itself. The majority rejected that construction and concluded that the clauses defining "related person" identify only classes of persons that have a relationship to the signatory operator and do not "describe" the signatory operator itself. Pet. App. 24a-25a. Thus, the majority ruled that, although the text of the Coal Act does expressly authorize an assignment

to the successor in interest of a person related to a signatory operator, it does not expressly provide for an assignment to the direct successor in interest of the signatory operator itself. *Id.* at 25a-26a.

Second, the majority, expressly disagreeing with the decision in *R.G. Johnson Co.* v. *Apfel*, 172 F.3d 890 (D.C. Cir. 1999), rejected the submission that the Coal Act should be construed to permit assignments to direct successors in interest in order to avoid results that would be plainly inconsistent with Congress's objectives in enacting the statute. Pet. App. 26a-31a. In *R.G. Johnson*, the District of Columbia Circuit sustained assignments to the direct successor in interest of a signatory operator after concluding that the failure to permit such assignments would frustrate Congress's intent to stabilize the financing of the Fund and to place liability for that financing on the businesses most responsible for plan liabilities. See 172 F.3d at 895. The panel majority in the court below, by contrast, concluded that Congress might reasonably have decided to promote sales of coal companies by shielding a direct purchaser of the signatory operator's assets from additional liabilities not contemplated in the original transaction. Pet. App. 33a-34a.

The majority acknowledged that it is anomalous to interpret the statute to permit liability to attach to the successor of a person "related" to the original signatory while shielding from liability the direct successor of the original signatory itself. Pet. App. 34a. The majority also acknowledged the legislative history supporting the Commissioner's construction. *Id.* at 30a-31a. But, the court concluded, "we are not simply free to ignore unambiguous language because we can imagine a preferable version." *Id.* at 34a.

Judge Murnaghan dissented. Pet. App. 37a-44a. He agreed with the D.C. Circuit's decision in *R.G. Johnson* that a literal construction of the Coal Act to exempt direct successors in interest of the signatory operator, from liability would conflict with Congress's clear purposes in enacting the statute. *Id.* at 41a. Judge Murnaghan stressed that a principal objective of the Coal Act was to ensure that a signatory operator's responsibility for its retired miners' health-care benefits was not shifted to other companies that had participated in the NBCWA system but had had no relationship with those retired miners, and that that purpose would be frustrated if the obligation to pay Combined Fund premiums for a signatory operator's retirees could not be placed on the direct successor of the signatory. *Id.* at 42a-43a. Indeed, he noted that the majority's suggestion that Congress might have wanted to promote the sale of coal companies by freeing the purchaser from responsibility for retirees' health benefits was contrary to the very premise of the Coal Act, for "[t]he widespread dumping of retirees by signatory operators leaving the coal industry was the principal cause of the coal industry's crisis. * * * In light of this history, it is unimaginable that Congress could have intended to promote the sale of coal companies to successors who would not be liable for Fund benefits." *Id.* at 42a. He therefore concluded that "[e]xcluding successors in interest to signatory operators from liability for Fund benefits is plainly inconsistent with Congress's intent in enacting the Coal Act." *Id.* at 44a.

SUMMARY OF ARGUMENT

A. The Coal Act provides that financial responsibility for the health-care costs of the employees of a signatory operator that signed a National Bituminous Coal Wage Agreement may be placed on the direct successor in interest of the signatory operator, if the operator is no longer in business. Under the Coal Act, the Commissioner of Social Security is to assign responsibility to the signatory operator or to any "related person," and the definition of "related person" includes any successor in interest. The pertinent provision,

26 U.S.C. 9701(c)(2)(A), after identifying in three clauses who shall be "considered" to be a related person to a signatory operator, further provides that a "related person" shall also "include" any successor in interest of a person "described" in any of those three clauses. The signatory operator is expressly referred to—and thus "described"—in each of the three clauses. Accordingly, under the express terms of the final sentence of Section 9701(c)(2)(A), a successor in interest of the signatory operator is a "related person" that the Commissioner may determine is responsbile for the signatory's retiree health-benefit liability under the Act.

This construction of the statute is far more consistent with the background, legislative history, and purposes of the Coal Act than is the contrary definition of "related person" adopted by the court of appeals, which excludes the direct successor in interest of the signatory operator. Congress enacted the Coal Act to respond to a crisis in the financial situation of multiemployer plans that were supposed to continue providing health-care benefits to retired miners. A principal cause of that crisis—as explained by the advisory commission that recommended legislative solutions to it—was the common industry practice of operators going out of business, selling their operations, or withdrawing from the NBCWA system, thus dumping responsibility for their retirees onto the operators remaining within the system. The legislative history of the Coal Act makes clear that Congress sought to avoid a recurrence of that crisis, and also to avoid placing responsibility for retired miners' health-care costs on the public fisc, by adopting a broad definition of the "related persons" that would be individually responsible for particular beneficiaries' health-care costs. Interpreting "related person" to include a direct successor in interest of a signatory operator advances that objective, because it ensures that signatory operators could not dump responsibility

for their retirees onto the other operators in the NBCWA system or the public by selling their operations to another entity or changing their corporate forms. By contrast, the court of appeals' construction rewards that very practice. The lower court's construction also leads to the highly peculiar result that a direct successor in interest that assumed the coal mining operations of the signatory operator using the signatory's employees cannot be made responsible for the retirement health benefits of the signatory's employees, while a more peripherally related successor to a corporate affiliate of the signatory, in an entirely different line of business, may be made responsible. There is no reason to believe Congress intended such a strange outcome.

This construction is also consistent with background principles of successorship that this Court and the courts of appeals have adopted in other labor, employment, and benefits statutes. In cases arising under the National Labor Relations Act (NLRA), this Court has held that the National Labor Relations Board (NLRB) may require a successor corporation to adhere to some of the labor-law obligations assumed by its predecessor, even though the NLRA does not specifically speak to the issue of successor liability. Lower courts have similarly concluded, under other employment and benefits statutes, including these governing employers' withdrawal liability to multiemployer benefit plans like the Combined Fund, that successors in interest may be liable for their predecessors' obligations. These principles were settled in the case law at the time Congress enacted the Coal Act, and Congress is presumed to have been aware of that well-developed law.

B. Even if the Coal Act itself does not in terms provide that a direct successor of a signatory operator is a "related person" under Section 9701(c)(2)(A), it authorized the Commissioner to determine that a direct successor may be liable for a signatory operator's employees. The entities that are

expressly "includ[ed]" as successors under the Act are not an exclusive category, and so the Commissioner may deem other entities as well to be successors that may be liable for a signatory's employees, if to do so would be reasonable and consistent with the design of the statute. The Commissioner's determination that direct successors may be responsible for the employees of a signatory is reasonable and consistent with the Coal Act. That determination advances Congress's objectives of ensuring that individual entities with connections to employees be made responsible for those employees' retirement health-care costs, and that those costs not be made the collective responsibility of other operators in the NBCWA system with no relation to such employees, or of the public. And in light of the factors that the Commissioner has set forth to govern whether an entity will be considered a successor of a signatory operator, the Commissioner's determination is reasonable, for it limits such liability to entities that effectively continued the coal mining operations of the signatory operator. The Commissioner's administration of the Coal Act to include direct successors of signatory operators therefore should be upheld.

ARGUMENT

THE COMMISSIONER PROPERLY DETERMINED THAT RESPONSIBILITY FOR THE EMPLOYEES OF A SIGNATORY OPERATOR MAY BE ASSIGNED TO THE DIRECT SUCCESSOR IN INTEREST OF THAT OPERATOR

In the Coal Act, Congress sought "to identify persons most responsible" for the liabilities of the 1950 and 1974 Benefit Plans "in order to stabilize plan funding" and to "allow for the provision of health care benefits" to retired miners and their dependents. *Eastern*, 524 U.S. at 514. To that end, Congress imposed principal financial responsibility

for payment of premiums to the Combined Fund on the signatory operators that signed the NBCWAs that had required employer contributions to the 1950 and 1974 UMWA Benefit Plans. See 26 U.S.C. 9704(a), 9706(a).

Congress was aware, however, that a principal cause of the financial crisis in the Benefit Plans was the common industry practice of operators "dumping" responsibility for their retired employees by leaving the coal business or dissolving. See pp. 3-4, *supra*. Congress was also determined to prevent a recurrence of that crisis, in which operators remaining in the NBCWA system that had no relationship to retired miners were forced to shoulder those miners' health-care costs as the original signatory operators that employed those miners left the system. To minimize the problem of financing benefits for such "orphan" or unassigned retirees under the Coal Act, Congress provided that responsibility for an operator's employees should be assumed by the operator's "related" entities, if the operator that employed the miners was no longer in a position to finance the Combined Fund premiums for its employees. 26 U.S.C. 9701(c)(2)(A), 9706(a). The design of this related-person liability provision—and a central purpose of the Coal Act—is that responsibility for a miner's health-care costs should remain, whenever possible, with the particular entities that have a connection, through the original signatory operator, to the individual miner, and not be shifted to the collective responsibility of all other operators who were in the NBCWA system, or to the public.

Congress, moreover, did not legislate in a vacuum. When Congress enacted the Coal Act in 1992, it acted against a background of well-developed case law in which the courts, including this Court, had addressed issues of liability and responsibility under federal labor, employment, and benefits statutes when a corporation leaves a line of business or dissolves and transfers its operations to a successor entity. As

we explain below (pp. 36-39, *infra*), the courts—starting with this Court's decisions recognizing successor responsibility under the National Labor Relations Act—had concluded that, in the closely regulated and worker-protective fields of labor, employment, and benefits law, obligations imposed on an employer by statute may properly devolve upon the employer's direct successor as well. The courts reached those conclusions, moreover, even in the absence of statutory language expressly providing for such successor responsibility. Given that settled legal background—and given the overarching purpose of the Coal Act to ensure that a signatory operator's obligations to the Combined Fund for its retirees are not foisted onto other entities with no historical tie to the signatory operator—Congress had every reason to expect that, if a signatory operator was defunct and no other related person could be found, the operator's direct successor in interest would become responsible for the operator's retired employees' health-care costs, and those costs would therefore not be transferred to other, unrelated operators, or to the public. At a minimum, nothing in the Coal Act prevented the Commissioner from drawing on those background principles of successorship law to determine that direct successors are appropriately made responsible for a signatory's Combined Fund premiums when no other related person is available. At the very least, the Commissioner's interpretation and application of the Act in these circumstances is reasonable and should be sustained by this Court.

A. The Coal Act Provides That A Direct Successor In Interest Of A Signatory Operator May Be Made Responsible For The Health-Care Premiums For The Operator's Retired Employees

The court of appeals, in concluding that a direct successor in interest cannot be made responsible for the Combined

Fund premiums for a signatory employer's retired miners, did not doubt either that the courts have endorsed successorship responsibility in various contexts (see Pet. App. 35a n.7; pp. 36-39 *infra*), or that Congress had intended to prevent a shifting of responsibility for retired miners' health-care costs away from entities with a connection to the signatory operator to unrelated entities and the public fisc (Pet. App. 33a; pp. 29-30, *infra*), or that it would be at least "somewhat anomalous" to permit liability to be placed on the direct successor in interest of a related person to the signatory operator (which all agree may be done under the Coal Act), but not the direct successor of the operator itself (Pet. App. 34a; pp. 30-31, *infra*). Nonetheless, the court of appeals concluded that Congress had not in exact words made direct successors in interest of signatory operators responsible for their predecessor operators' Combined Fund premiums, and so, no matter how compelling such responsibility might be as a matter of congressional design, consistency with other principles of law, or logic, it could not be adopted. As we now show, the court of appeals' reading of the statute is flawed. Direct successor responsibility is consistent with the statutory language, and is far more in harmony with both the overall congressional design and background principles of successorship in the law than is the strange result reached by the court of appeals.

1. *The Text Of The Coal Act*

a. The text of the "related person" provision of the Coal Act, 26 U.S.C. 9701(c)(2)(A), provides that responsibility for Coal Act premiums may be placed on direct successors in interest of signatory operators. Section 9706(a) provides that any Combined Fund beneficiary for which a signatory operator would be responsible may be assigned by the Commissioner to a "related person" to the signatory operator. Clauses (i), (ii), and (iii) of Section 9701(c)(2)(A) in turn set

forth three categories of persons and entities that "shall be considered to be a related person." One of those categories, for example, reaches any "member of the controlled group of corporations * * * which includes [the] signatory operator," 26 U.S.C. 9701(c)(2)(A)(i), and incorporates by reference the definition of "controlled group of corporations" in 26 U.S.C. 52(a). The last sentence of Section 9701(c)(2)(A) further provides that "[a] related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii)." 26 U.S.C. 9701(c)(2)(A). The referenced clauses (i), (ii) and (iii) all "describe" a family of businesses that are considered related to one another by an element of common ownership or control, and all expressly refer to the "signatory operator" as among the family.

A straightforward reading of these provisions leads to the conclusion that a "related person" includes a successor in interest of the signatory operator itself. As noted, the last sentence of Section 9701(c)(2)(A) states that the term "related person" "include[s]" a successor in interest of "any person described in clause (i), (ii), or (iii)." Clause (i) defines a "related person" to include any entity that is a member of the controlled group of corporations that includes the "signatory operator" itself. The signatory operator itself is thus "described" in clause (i) by virtue of that express reference alone. In addition, the signatory operator is necessarily a member of a controlled group of corporations that includes itself. That conclusion follows as a matter of logic: Corporation A is a member of the controlled group that includes corporations A, B, and C. Thus, "a successor in interest" of any entity described as a member of the group of corporations A, B, and C, includes a successor in interest of corporation A.

That reading of Section 9701(c)(2)(A) is bolstered by the treatment of "controlled group of corporations" in Section 52(a), to which Section 9701(c)(2)(A) refers. Section 52(a)

provides that, for certain purposes, "all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer." Section 52(a) is not intended merely to provide that (to use the example above) employees of corporation A may be treated as employees of B and C. As its expansive language demonstrates, it is fully consistent with treating employees of A as employees of A, should such treatment be appropriate in the particular context. See also 26 U.S.C. 9706(b)(1)(A) ("Any employment of a coal industry retiree in the coal industry by a signatory operator shall be treated as employment by any related person to such operator.").

b. The panel majority believed that the signatory operator itself cannot be one of the entities "described" in clauses (i), (ii), and (iii) of Section 9701(c)(2)(A), and therefore a successor in interest to the signatory operator cannot qualify under the final sentence of Section 9701(c)(2)(A). The panel reasoned (Pet. App. 24a-25a) that a signatory operator cannot be "described" in one of those three clauses because the purpose of those clauses is to define who may be a "related person to a signatory operator." Thus, the panel stated, "[b]ecause the persons *described* in those clauses are described in terms of their relationship to the signatory operator, it would seem evident that they cannot include the signatory itself. To suggest otherwise is tantamount to saying 'I am related to me.'" *Id.* at 25a (quoting *R.G. Johnson*, 172 F.3d at 894).

Contrary to the panel's conclusion, the "description" of persons in Section 9701(c)(2)(A) does not exclude the signatory operator itself. Rather, the signatory operator is expressly mentioned in all three clauses of that Section. While it is true that the general purpose of Section 9701(c)(2)(A) is to identify entities other than the signatory operator that may be responsible for the health-care benefits

of the operator's employees, the Section accomplishes that purpose by describing broad, related groups of entities that specifically include the signatory operator itself, as well as successors in interest to each of those entities. Section 9701(c)(2)(A) does not (as the court of appeals suggested) simply state that "A is related to A"; rather it provides that the persons that are related to one another include A and (if such exist) B and C, as well as any successors in interest of A, B, and C.

Nor was the court of appeals justified in concluding that the statute's reference to any person that is "described" in the separately enumerated clauses of Section 9701(c)(2)(A) somehow excludes the signatory operator. The word "describe" means, among other things, "express" or "set forth." *Black's Law Dictionary* 445 (6th ed. 1990). The term "signatory operator" is plainly "expressed" or "set forth" in each of the three enumerated clauses of Section 9701(c)(2)(A). Moreover, as we have explained, a signatory operator by definition is "a member of the controlled group of corporations * * * which includes such signatory operator," 26 U.S.C. 9701(c)(2)(A)(i). The original signatory is similarly among the entities "described" in clauses (ii) and (iii) of 26 U.S.C. 9701(c)(2)(A). It therefore follows that the last sentence of Section 9701(c)(2)(A), by authorizing assignments to successors in interest to the corporations thus "described," authorizes assignments to the signatory operator's own successor in interest.

2. *The Background, Legislative History, And Purposes Of The Coal Act*

a. The background, legislative history, and purposes of the Coal Act confirm that Congress intended that liability for a signatory operator's employees could be placed on the direct successor in interest of the signatory. As we have noted (pp. 3-4, *supra*), members of the Coal Commission

established by the Secretary of Labor to formulate recommendations for redressing the funding crisis in the 1950 and 1974 Benefit Plans observed, in the Commission's report to the Secretary, that the financial crisis facing the Plans had been caused in part by an industry practice of using corporate sales, mergers, and other similar transactions to avoid contractual obligations to finance retiree health care.

To ensure that such corporate transactions would not shield companies from statutory liability under the Coal Act, Congress imposed premium obligations on a purposefully broad and expansive class of persons "related" to the original signatory. An explanation of the legislation placed in the *Congressional Record* by Senator Wallop, one of the Coal Act's sponsors, made that point clear:

> [B]ecause of complex corporate structures which are often found in the coal industry, the number of entities made jointly and severally liable for a signatory operator's obligations under the definition of related persons is intentionally very broad.
>
> In this regard, the term "related person" is defined broadly to include companies related to the signatory operator. The Conference Agreement makes each such related person fully responsible for the signatory operator's obligation to provide benefits under the Act should the signatory no longer be in business, or otherwise fail to fulfill its obligations under the Act. Thus, the statute provides that related persons—meaning (i) those within the controlled group of corporations including the signatory operator, using a 50% common ownership test, (ii) a trade or business under common control with a signatory operator, (iii) one with a partnership interest or joint venture with the signatory operator, or (iv) *in specific instances successors to the collective bargaining agreement obligations of a signatory operator—are equally*

obligated with the signatory operator to pay for continuing health care coverage.

138 Cong. Rec. at 34,002 (emphasis added). In similar fashion, Senator Rockefeller, the principal sponsor of the Coal Act, explained on the floor of the Senate that the term "signatory operator" includes "a successor in interest of such operator." *Id.* at 34,033.[9] The views of these sponsors of the Coal Act are entitled to special weight (see, *e.g.*, *North Haven Bd. of Educ.* v. *Bell*, 456 U.S. 512, 526-527 (1982)) and in this case confirm that the Act was intended to reach a broad range of entities, including a company that, like respondent Jericol, is the direct successor of a signatory operator that employed the pertinent beneficiaries.

On the other hand, to construe the related-person provision to exclude a signatory's direct successor in interest would be contrary to Congress's stated purposes of ensuring that each Combined Fund beneficiary's health-care costs is borne (if possible) by the person with the most direct responsibility for the beneficiary, and not by other signatory operators that had no connection with the beneficiary, or by the public fisc.[10] As Senator Wallop explained, the related-

[9] The provisions that became the Coal Act were added to energy legislation pending in the Senate as a floor amendment offered by Senator Rockefeller. See 138 Cong. Rec. at 20,117-20,122, 20,161-20,167. The ultimate version of the Coal Act was unchanged from that Rockefeller amendment.

[10] See Energy Policy Act, Pub. L. No. 102-486, § 19142(a)(2), 106 Stat. 3037 (congressional finding that "it is necessary * * * to identify persons most responsible for plan liabilities"), § 19142(b)(3), 106 Stat. 3037 (statement of congressional policy that benefits should be provided through "a privately financed self-sufficient program"); 138 Cong. Rec. at 34,001 (explanation by Sen. Wallop) (stating that conference committee had "rejected" the approach of a "government fund to administer the payment of benefits" and provided instead for "a privately financed and administered benefit plan structure").

person provision is intended "to insure that every reasonable effort is made to locate a responsible party to provide the benefits before the cost is passed to other signatory companies which have never had any connection to the individual," and its "overriding purpose is to find and designate a specific obligor for as many beneficiaries in the Plans as possible." 138 Cong. Rec. at 34,002. But in this case, if respondents were deemed not to be responsible for the retiree health-benefit obligations of Shackleford, the signatory operator, then responsibility for financing the health costs of Shackleford's former employees might fall on the public, because the beneficiaries' health-care costs would be financed by transfers from interest earned on the Department of the Interior's Abandoned Mine Reclamation Fund. See p. 8, *supra*. If transfers from that source are exhausted or for some other reason not available, then the beneficiaries' health-care costs would become the collective responsibility of all the other signatory operators, including those operators that had no relation to any entity that ever employed them. See *ibid.*

The exclusion of direct successors from liability would therefore create a statutory lacuna in which no specific company may be held responsible for a beneficiary's health-care costs, even in instances where the Commissioner determines that there is a coal mining company that substantially continued the signatory's coal operations, used the signatory's name and good will, assumed its obligations under the collective bargaining agreement, and retained many of its employees. As a result, successors would be relieved of statutory liability whenever they engaged in the very conduct Congress sought to remedy in the Coal Act: the purchase of coal mining assets through private contractual arrangements that dumped health-care costs on other parties while purporting to relieve both the original signatory and its succeeding purchaser of any obligation to fund

the benefits promised to the employees covered by the collective bargaining agreement.

b. The court of appeals declined to read the related-person provision to reach direct successors because it believed that the statutory language in Section 9701(c)(2)(A) clearly excluded such direct successors. See Pet. App. 31a. But as we have explained (pp. 23-26, *supra*), that language is at a minimum reasonably susceptible of an interpretation that comprises direct successors of signatory operators, even if, in isolation, it might also be read differently to reach only successors of other related persons, and not successors of the signatories themselves. The Court should therefore choose, from among permissible readings of the Coal Act's related-person provisions, the construction that effectuates Congress's "overriding purpose" (p. 29, *supra*) of avoiding a recurrence of the "orphan" retiree catastrophe of the last days of the Benefit Plans, which was caused in large part by operators avoiding responsibility for their beneficiaries by changing their corporate structures, selling assets, or ceasing operations. As this Court has stressed on numerous occasions, "in expounding a statute, [the Court] must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *United States Nat'l Bank of Or.* v. *Independent Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993); see also *United States* v. *Heirs of Boisdore*, 49 U.S. (8 How.) 113, 122 (1849). Quite recently, the Court reiterated that the object and purposes of a statute must inform its construction, especially when the language of the statute is amenable to more than one interpretation; even if the textual reading that more accurately captures congressional intent is the less common or natural one, it should nonetheless be preferred to a highly literal interpretation that contradicts "clear congressional policy." *Johnson* v. *United States*, 529 U.S. 694, 706 n.9 (2000). And the court of appeals' reading of Section

9701(c)(2)(A) has little to recommend it when evaluated against the fundamental objective of effectuating congressional intent.

Indeed, the court of appeals' construction of Section 9701(c)(2)(A) leads to the highly counter-intuitive result that a direct successor in interest of a signatory may *not* be made responsible for a signatory's beneficiaries—even though such successor liability would be supported by background principles of successorship (see pp. 36-39, *infra*)—while a more distantly related successor in interest of a corporate affiliate of a signatory operator may be made responsible for the signatory's beneficiaries—even though such liability is a substantial departure from traditional principles. For example, the court of appeals' reading of the statute would permit premiums to be imposed on the successor of a food processing company under common control with a sister company that mined coal and was a signatory operator; but at the same time, no liability would attach to a coal company that purchased all of the signatory's mining operations, used the signatory's name and employees, and assumed the signatory's collective bargaining obligations with the UMWA. There is no reason to believe that Congress could have intended to create such a strange distinction. Precisely because that result would be so unmoored from all indications of the congressional purpose underlying the Coal Act, the District of Columbia and Third Circuits rejected that reading and concluded that direct successors of signatory operators are to be considered related persons under the statute. See *R.G. Johnson*, 172 F.3d at 895; *Aloe Energy Corp.* v. *Apfel*, 225 F.3d 648 (3d Cir. 2000) (Table) (*reprinted at* 00-725 Pet. App. at 7a-8a), petition for cert. pending, No. 00-725.

The court of appeals in this case nonetheless stated that, although "[t]he Commissioner's reading of the statute may be appealing in terms of its logic, * * * we cannot adopt it

as our own without trespassing on a function reserved for the legislative branch." Pet. App. 35a. Respect for Congress's legislative function, however, does not require the Court to hew to a construction of the statute that yields peculiar results at odds with every other manifestation of congressional intent. See *United States* v. *X-Citement Video, Inc.*, 513 U.S. 64, 70-71 (1994) (rejecting the "most grammatical reading" of the statute, where it would lead to anomalous results); *United States* v. *Brown*, 333 U.S. 18, 27 (1948) ("No rule of construction necessitates our acceptance of an interpretation resulting in patently absurd consequences."); see also *Things Remembered, Inc.* v. *Petrarca*, 516 U.S. 124, 135 (1995) (Ginsburg, J., concurring) ("It would show little respect for the legislature were courts to suppose that the lawmakers meant to enact an irrational scheme.").

The court of appeals also hazarded that Congress might have decided to exempt direct successors of signatory operators from responsibility for Coal Act premiums, even while making successors to related persons responsible, because "[a] major complaint lodged by the coal operators" during the last days of the Benefit Plans "was that they were being required to pay benefits for retired miners who never worked for them or maintained any other relationship with them." Pet. App. 33a. Thus, the court of appeals remarked, Congress might have believed that direct successors would similarly object to being responsible for their predecessor signatories' employees, and would not have supported the Coal Act if they had faced such responsibility. *Id.* at 33a-34a.

The court of appeals' suggestion, however, is the direct opposite of what was actually Congress's design in the Coal Act. Congress did indeed seek to prevent, to the extent possible, responsibility for a signatory's employees from being placed on coal operators that were totally unrelated to that signatory. Thus, Congress erected the three-tier structure in Section 9706(a) to ensure that any signatory operator that had employed a miner (or any related person to such a signatory operator) that remained in business would be assigned the miner before that miner was made the collective responsibility of all the remaining operators that had participated in the NBCWA system. See pp. 7-9, *supra*. But Congress did *not* perceive direct successors in interest to be "unrelated" to the original signatory operator—and therefore deserving of protection from liability under the Coal Act—just as it did not perceive other related persons and direct successors of related persons to be deserving of such protection. To the contrary, Congress deliberately defined "related person" very expansively, precisely so that other entities that had never had any affiliation or successorship relation with a signatory operator would not be made responsible for that signatory's employees.[11]

[11] The Coal Act's provision for related-person liability to the Combined Fund is broader than the analogous provision in the earlier version of the legislation that was vetoed by the President. See p. 5, note 2, *supra*; H.R. Conf. Rep. No. 461, 102d Cong., 2d Sess. 270-296 (1992). That earlier version would have imposed liability for a particular retiree's health-care costs on the "last signatory operator" that had signed a 1978 or later NBCWA, had been the last employer of the retiree, and remained in business, and would have relied on an industry-wide tax on coal production to finance collectively the health-care benefits of "orphan" retirees. See *id.* at 274-275 (proposed § 9704(g)(1) would have imposed premium on bituminous coal produced and imported; proposed § 9704(g)(1)(C) would have required premium for individual employees from "each last signatory operator"); *id.* at 286 (proposed § 9714(a) would have obligated "last signatory operator" to remain liable for any retiree then receiving health-care benefits, either though individual plan or new combined-fund plan, as long as it remained in business); *id.* at 294-295 (proposed § 9723(6)(A) defining "last signatory operator").

The earlier version of the legislation had a provision for "controlled group liability" with respect to any last signatory operator, which incorporated the "controlled group" principles of 26 U.S.C. 414(b). See H.R. Conf. Rep. No. 461, *supra*, at 288 (proposed § 9714(d) would have adopted

The court of appeals further suggested (Pet. App. 32a), based on Judge Randolph's dissent in *R.G. Johnson*, 172 F.3d at 895, that Congress might have wanted to facilitate the sale of coal companies to successors, and that, without an

controlled-group liability); *id.* at 294 (proposed § 9723(5)(B) would have used "controlled group" principles of Section 414(b)). When Congress abandoned the approach of a bituminous coal tax to finance orphan retirees' benefits, it at the same time expanded the responsibility of individual operators to finance the benefits of individual retirees, in part by adding the expansive related-person provision of Section 9701(c)(2)(A) (and also, in the third tier of Section 9706(a)(3), by extending liability to include signatory operators that had only signed NBCWAs executed before 1978). The related-person provision in Section 9701(c)(2)(A) as eventually enacted incorporates the broader controlled-group rules of 26 U.S.C. 52(a), which requires only 50% common stock ownership among corporations, not 80%, as does Section 414(b) (which incorporates by reference 26 U.S.C. 1563(a)). Thus, the rules for entities that may be deemed within the controlled group—and thus made responsible for an individual beneficiary's health-care costs—in the version of the Coal Act that was ultimately enacted are significantly broader than were the rules in the earlier, vetoed version.

It is also noteworthy that the earlier version of the legislation contained a definition of "last signatory operator" that specifically included "any successor" of a last signatory operator that was no longer in business. H.R. Conf. Rep. No. 461, *supra*, at 294-295 (proposed § 9723(6)(A)(i)(III)). Nothing in the background or legislative history of the Coal Act suggests that Congress intended, in the version that was ultimately enacted, to draw back from this direct-successor liability. To the contrary, as we have explained in this footnote, the version that was ultimately enacted made the rules for individual company responsibility to the Combined Fund significantly broader than in the vetoed version. As we have also explained in the text, Section 9701(c)(2)(A), properly construed, specifically includes the successor in interest of the signatory itself among the successors and related persons that are responsible for the signatory's retiree health-benefits liability. See also 26 U.S.C. 9711(g)(1) (defining "last signatory operator" to include successors for purposes of continuing contractual liability to individual employer plans and statutory liability to 1992 Plan).

exemption from responsibility for successors of signatories, prospective purchasers could never be sure of their potential liability for Combined Fund premiums. As an initial matter, however, it is difficult to see what any congressional policy (even if such existed, which it did not, see pp. 35-36, *infra*) of promoting the sale of coal companies *in the future* could have to do with determining whether a direct successor might be made responsible for the employees of a signatory operator that had *already* gone out of business. The Commissioner's "related party" determinations are based on relationships among entities as of July 20, 1992, or earlier—before the Coal Act was enacted. See 26 U.S.C. 9701(c)(2)(B). Thus, any purchase and sale that were supposedly to be promoted by the Coal Act would have already occurred when that statute became law.

Moreover, as Judge Murnaghan pointed out in dissent, the majority's speculation about Congress's purpose cannot be sustained in any event because it "presumes that Congress intended to promote the exact practice that necessitated legislative action in the first place." Pet. App. 42a. It was in large part signatories' practice of selling their operations to other companies that were not parties to the NBCWAs that led to the financial crisis that plagued the pre-Coal Act Benefit Plans.[12] As Judge Murnaghan observed (*ibid.*), "it is unimaginable that Congress could have intended to promote the sale of coal companies to successors who would not be liable for Fund benefits." In addition, the court of appeals' suggestion offers no explanation as to why Congress would

[12] Indeed, Congress anticipated and specifically guarded against the possibility that signatories might try to dump their employees while the Coal Act was being framed. Thus, in Section 9701(c)(2)(B), Congress provided that the "related party" determinations should be made as of July 20, 1992 (or earlier, if as of that date the signatory operator was no longer then in business)—three months before the Act's date of enactment, October 24, 1992 (see 106 Stat. 2776).

not have had the same concern about successors in interest of related persons, who indisputably may be liable for Combined Fund premiums under the final sentence of Section 9701(c)(2)(A). Thus, the speculation by the panel majority fails to provide any persuasive basis for the distinction, created by the majority's reading of Section 9701(c)(2)(A), between direct successors of signatory operators and successors of related persons to signatory operators.

3. *Background Principles Of Successorship Informing The Text*

The Commissioner's construction of the Coal Act as including successors in interest of signatory operators among the entities that may be financially responsible for the signatory's employees is supported by the relevant legal background against which Congress legislated—in particular, the courts' (including this Court's) treatment of successorship issues in other labor, employment, and benefits statutes. Before Congress enacted the Coal Act in 1992, the courts had ruled in a variety of contexts that a corporate entity's liability under a statutory scheme should be attributed to the entity's direct successor in interest, even absent language specifically providing for such successorship liability.[13] In light of those background principles, Congress had every reason to expect that responsibility for a signatory operator's employees under the Coal Act would devolve on the signatory's direct successor in interest, if the signatory itself was defunct and no other related person could be

[13] That background of judicial endorsement of successorship liability is also consistent with Congress's express directive in the Dictionary Act that a statutory reference to a company or association "shall be deemed to embrace the words 'successors and assigns of such company or association,' in like manner as if these last-named words, or words of similar import, were expressed." 1 U.S.C. 5.

found. Indeed, that would have been the most sensible application of the Coal Act even if Congress had not addressed successors in Section 9701(c)(2)(A) at all.

Before 1992, this Court had held in a series of decisions that the National Labor Relations Board was authorized to hold a successor responsible for labor-law obligations of its predecessor. In *Fall River Dyeing & Finishing Corp.* v. *NLRB*, 482 U.S. 27, 41 (1987), the Court held that a successor employer has a continuing duty to bargain with the union certified during the predecessor employer's operation of the workplace, where the majority of the successor's employees were employed by the predecessor. In *Golden State Bottling Co.* v. *NLRB*, 414 U.S. 168, 181-185 (1973), the Court similarly ruled that the National Labor Relations Act, the NLRB was authorized to impose a reinstatement and back pay order as a remedy for an unfair labor practice on the bona fide successor to the employer that had engaged in the unfair labor practice, and also held (*id.* at 182 & n.5) that such successorship liability was proper even if (as in this case) the successor had purchased the assets of the predecessor, rather than succeeding to it by formal merger or consolidation. And in *John Wiley & Sons, Inc.* v. *Livingston*, 376 U.S. 543 (1964), the Court held that the successor in that case was bound by the duty to arbitrate assumed by its predecessor under a collective bargaining agreement.[14]

[14] In two labor-law cases, this Court has held that a successor was not bound by obligations of its predecessor. In *NLRB* v. *Burns International Security Services, Inc.*, 406 U.S. 272 (1972), the Court held that, although the successor was bound by the statutory obligation under the NLRA to bargain in good faith with the union that had recently been recognized in a certification election as the representative of the employees of the predecessor corporation (*id.* at 278), the NLRB could not require the successor to be bound by the substantive terms of the collective-bargaining agreement signed by its predecessor and the union (*id.* at 281-291). In reaching the latter conclusion, the Court stressed that the NLRB

The lower courts have reached similar conclusions about successor responsibility in construing other labor, employment, and benefits statutes that are designed to protect the interests of employees. In cases involving successor employers' obligations to make payments to multiemployer pension plans, the courts have concluded that a successor may be held liable for a predecessor's contribution obligations and withdrawal liability to a plan.[15] Those precedents are especially significant here, for Congress specified in the Coal Act that the Combined Fund shall be a multiemployer plan within the meaning of the Employee Retirement Income Security Act of 1974 (ERISA) (see 26 U.S.C.

had no authority to dictate the substance of a collective-bargaining agreement, and that the NLRA deliberately left to the parties the freedom to reach contractual arrangements that they believed to be in their own best interest. See *id.* at 283-287. No such overriding statutory policy of freedom of contract is implicated in this case, and this case does not in any event involve the imposition of contractual responsibility on a successor. We do note, however, that in this case, the successor corporation voluntarily assumed the contractual obligations of the signatory operator, including those under the collective bargaining agreement. J.A. 23, 26.

In *Howard Johnson Co.* v. *Detroit Local Joint Executive Board*, 417 U.S. 249 (1974), the Court ruled that a successor employer was not bound by the duty to arbitrate assumed by its predecessor. That ruling, however, was based on the conclusion that there was no "substantial continuity of identity in the business enterprise" before and after the change in ownership, *id.* at 263, and thus that the latter owner was not a true successor to the former, such that the former's obligations could be transferred to it. That ruling also has no application to this case, which does involve a substantial continuity in business operations between the predecessor and successor operators. See p. 12, *supra*.

[15] See *Upholsterers' Int'l Union Pension Fund* v. *Artistic Furniture of Pontiac*, 920 F.2d 1323, 1329 (7th Cir. 1990); *Hawaii Carpenters Trust Funds* v. *Waiola Carpenter Shop, Inc.*, 823 F.2d 289, 293-294 (9th Cir. 1987); see also *Chicago Truck Drivers Union (Indep.) Pension Fund* v. *Tasemkin, Inc.*, 59 F.3d 48, 49 (7th Cir. 1995).

9702(a)(3)(C)), and that Section 4301 of ERISA, 29 U.S.C. 1451, which provides for suits to enforce the multiemployer liability provisions of ERISA, "shall apply to any claim arising out of an obligation to pay an amount required to be paid [under the Coal Act] in the same manner as any claim arising out of an obligation to pay withdrawal liability" under ERISA (see 26 U.S.C. 9721). Courts have also held, in various contexts, that a successor corporation is responsible for obligations imposed on the predecessor under Title VII of the Civil Rights Act of 1964,[16] 42 U.S.C. 1981,[17] the Age Discrimination in Employment Act of 1967,[18] and the Fair Labor Standards Act of 1938.[19]

Congress is presumed to have been aware of this precedent endorsing successor liability when it enacted the Coal Act. See *United States* v. *Wells*, 519 U.S. 482, 495 (1997). The most reasonable construction of the Coal Act, therefore, is that Congress fully anticipated that direct successors in interest of signatory operators could be held responsible for the benefits of the signatories' own employees. Indeed, in light of the courts' similar treatment of successorship in other employment-regulation statutes, that would have been true even if Congress had not inserted any

[16] See *EEOC* v. *Vucitech*, 842 F.2d 936, 944-946 (7th Cir. 1988) (successor liable under Title VII for sex discrimination claim against predecessor); *EEOC* v. *MacMillan Bloedel Containers, Inc.*, 503 F.2d 1086 (6th Cir. 1974) (similar; race discrimination claim under Title VII); see also *Bates* v. *Pacific Mar. Ass'n*, 744 F.2d 705, 707-709 (9th Cir. 1984) (Kennedy, J.) (successor bound by Title VII consent decree to which predecessor had agreed).

[17] See *Musikiwamba* v. *ESSI, Inc.*, 760 F.2d 740, 745-750 (7th Cir. 1985).

[18] See *Criswell* v. *Delta Air Lines, Inc.*, 868 F.2d 1093, 1094 (9th Cir.), cert. denied, 489 U.S. 1066 (1989).

[19] See *Steinbach* v. *Hubbard*, 51 F.3d 843, 845-846 (9th Cir. 1995).

language in the Coal Act specifically addressing successor liability.

B. Even If The Coal Act Did Not Itself Affirmatively Provide That Responsibility For Combined Fund Premiums May Be Imposed On A Signatory's Direct Successor, The Commissioner's Determination That Successors May Be Responsible For Combined Fund Premiums Would Be Reasonable

Even if the Court were to conclude that the Coal Act does not itself affirmatively provide that a signatory's direct successor may be made responsible for signatory's retired employees, it certainly does not expressly exclude that possibility. And in light of the considerations discussed above—the financial crisis in the Benefit Plans that led to passage of the Coal Act, Congress's intent to place liability for retirees' premiums on entities connected to the signatory that employed the miners rather than the public or the collective responsibility of all other signatory operators, and the background principles of successorship against which Congress legislated—it was reasonable for the Commissioner to conclude that direct successors of a signatory operator should be responsible for the operator's employees, when the operator is defunct and no other related person is available.

1. The Commissioner's Authority Under The Act

Section 9701(c)(2)(A) states that, "[i]n general," the Commissioner "shall * * * consider[]" to be related persons certain companies under common ownership or control with the signatory operator. That Section further provides, in the closing sentence, that a related person "shall also include" a successor in interest to any person "described" in clauses (i) through (iii) of that Section. Even if the Court were to conclude, contrary to our submission in Point A, that the signatory operator itself is not "described" in clauses (i), (ii),

and (iii) of Section 9701(c)(2)(A), and thus that the direct successor of the signatory is not in terms covered by the final sentence of Section 9701(c)(2)(A), the text of Section 9701(c)(2)(A) nonetheless does not preclude the Commissioner from assigning beneficiaries to such a successor. Section 9701(c)(2)(A) expressly sets forth the entities that the Commissioner *must* "include" as related persons under successorship principles, but it does not prohibit the Commissioner from "including" other companies that are also connected to the signatory operator by successorship.

Congress's use of the word "include" in the last sentence of Section 9701(c)(2)(A), introducing the principle of successorship, signifies that the entities expressly made liable in the statute by successorship principles are not exclusive, and that the Commissioner has authority to treat as successors other companies not expressly set forth in the statutory text. The statutory term "include," when used in a definitional provision, is commonly employed in a non-exclusive sense, to "import[] a general class, some of whose particular instances are those specified in the definition." *Helvering* v. *Morgan's, Inc.*, 293 U.S. 121, 125 n.1 (1934).[20]

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[20] See also *Pfizer Inc.* v. *Government of India*, 434 U.S. 308, 312 n.9 (1978); *FEC* v. *Massachusetts Citizens for Life, Inc.*, 769 F.2d 13, 17 (1st Cir. 1985), aff'd, 479 U.S. 238 (1986); 2A Norman J. Singer, *Statutes and Statutory Construction* § 47.07, at 231 (rev. ed. 2000) ("It has been said 'the word "includes" is usually a term of enlargement, and not of limitation. . . . It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated. . . .'"). The same is true of the close cognate term "including." "[T]he term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle." *Federal Land Bank of St. Paul* v. *Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941); see also *Puerto Rico Mar. Shipping Auth.* v. *ICC*, 645 F.2d 1102, 1112 n.26 (D.C. Cir. 1981); Bryan A. Garner, *A Dictionary of Modern Legal Usage* 431-432 (2d ed. 1995) (noting that the term "including" "should not be used to introduce an exhaustive list, for it implies that the list is only partial").

That inference is particularly strong when a statute uses *both* "includes" and "means" to express the reach of statutory terms, as the Coal Act does.[21] Unlike the word "includes," the term "means" generally does imply an exhaustive definition.[22] Congress's use of "include[s]" in Section 9701(c)(2)(A) to introduce the principle of successorship, in close proximity with its use of "means" elsewhere in the Coal Act, indicates that the final sentence of Section 9701(c)(2)(A) does not exhaust the range of entities that the Commissioner may reasonably make responsible for a signatory's employees under successorship principles.

At the same time, Congress may well have expressly provided in Section 9701(c)(2)(A) for liability of successors in interest of "related persons" to signatory operators (such as successors of corporate affiliates) because (unlike the background principle of successorship liability discussed at pp. 36-39, *supra*), that more remote related-person and successor liability is not firmly established in the case law. Indeed, the Coal Act substantially departed from settled common law principles by extending liability for signatory operators' employees to other corporate entities that are merely related to the signatory operator through common

[21] The related-person provision of Section 9701(c)(2)(A) is one of several statutory terms defined in a statutory section entitled "Definitions of general applicability" (26 U.S.C. 9701). Most of the other definitions in Section 9701 state what a statutory term "means," indicating a congressional intent to set forth in the text of the statute a comprehensive definition of the term in question. See, *e.g.*, 26 U.S.C. 9701(c)(1) (stating that the term "signatory operator" "means a person which is or was a signatory to a coal wage agreement").

[22] See *United States* v. *New York Tel. Co.*, 434 U.S. 159, 169 & n.15 (1977); 2A Norman J. Singer, *supra*, § 47:07, at 231 ("A term whose statutory definition declares what it 'includes' is more susceptible to extension of meaning by construction than where the definition declares what a term 'means.'").

ownership or control, without any requirement of a showing that the related entity either was directly involved in the signatory's operations or was used to perpetrate fraud.[23] Given that statutory departure from common law principles, the Commissioner and the courts, without express direction from Congress, might well have declined to extend liability even further, to successors in interest of entities that were merely related persons to the signatory operator. But, as we have explained, in light of the state of the law at the time the Coal Act was enacted, extending liability to the direct successor in interest of the signatory operator itself would not have involved an innovation in the law.

Especially against that background, the fact that the statute expressly makes successors to other "related persons" such as affiliate corporations liable for Combined Fund premiums does not give rise to a negative inference that any other kind of successor is necessarily shielded from liability. While it is often true that "an express statutory requirement" in one provision, "contrasted with statutory silence" in another provision, "shows an intent to confine the requirement to the specified instance" (*Field* v. *Mans*, 516 U.S. 59, 67 (1995)), that "negative pregnant argument should not be elevated to the level of interpretive trump card" (*ibid.*) where, as here, it "suggests results strangely at odds

[23] See generally *Fletcher Cyclopedia of the Law of Private Corporations* § 43, at 711-718 (West 1999) (discussing limited circumstances in which separate-entity status of parent and subsidiary or affiliate corporations will be disregarded, and explaining (at 718) that "there can be no piercing of the veil without a showing of improper conduct"); see also *Cedric Kushner Promotions, Ltd.* v. *King*, No. 00-549 (June 11, 2001), slip op. 5 (observing that "incorporation's basic purpose is to create a distinct legal entity, with legal rights, obligations, powers, and privileges" separate from those of its creators); *United States* v. *Bestfoods*, 524 U.S. 51, 61-62 (1998) (discussing "bedrock principle" that a parent corporation is not liable for its subsidiary's acts).

with other textual pointers" (*id.* at 75) and would lead to results at which "common sense would balk" (*id.* at 68). In this case, mechanical application of a "negative-pregnant" rule would indeed yield strange results, for it would shield from liability direct successors in interest of a signatory operator, while placing responsibility on statutorily enumerated businesses (successors of entities that were under common control with the signatory) that are more distantly related to the signatory operator. The more logical reading of the statute is that Congress expressly directed that those more distantly related successor companies be included, not to foreclose reaching other, more proximate successors, but rather to ensure that the Commissioner would apply the sort of successorship liability that is well settled for direct successors of the predecessor corporation itself to situations involving successors of corporations that, though not the predecessor itself, are within the family of corporations that includes the predecessor. Congress thus simply confirmed the Commissioner's power to apply successorship liability broadly in light of the overarching objective of keeping the number of unassigned beneficiaries to "an absolute minimum," 138 Cong. Rec. at 34,003 (explanation by Sen. Wallop) without in any way restricting the Commissioner's authority to rely on background principles to place responsbility on the direct successors of the signatory operator itself.

2. *The Reasonableness Of The Commissioner's Determination*

The Commissioner's determination that a direct successor of a signatory operator should be responsible for the Combined Fund premiums of the signatory's employees when the signatory itself (along with all other related persons) is defunct, is reasonable and consistent with the purposes and design of the Coal Act. That determination should therefore be upheld as a reasonable exercise of the Commissioner's

authority to construe and administer the statute. See *Chevron U.S.A. Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-844 (1984).[24]

First, as we have explained (pp. 36-39, *supra*), Congress enacted the Coal Act against a background of decisional law that had adopted direct-successorship responsibility in a broad variety of contexts in labor, employment, and benefits statutes, specifically including employer liability to multiemployer ERISA plans. Therefore, even if Congress did not expressly speak to the matter of direct successorship in the final sentence of Section 9701(c)(2)(A), it is reasonable for the Commissioner to apply those well-settled background principles in the context of the Coal Act. Nothing in the text or design of the Coal Act or Congress's purposes in enacting it suggests that Congress would have intended to *exclude* such direct successors from liability or to prevent the Commissioner from employing those principles—just as in *Fall River Dyeing*, this Court found nothing in the text, design, or purposes of the NLRA to prevent the NLRB from applying those principles of successorship to hold a successor employer to the predecessor's duty to bargain in good faith with a duly certified union that retains a presumption of majority support. See 482 U.S. at 40-41; pp. 36-37, *supra*.

To the contrary, the crisis in the NBCWA system that led Congress to enact the Coal Act was precipitated in large part by transactions like the one at issue in this case. The

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[24] The Coal Act presents a situation, where Congress has "expect[ed] the agency to be able to speak with the force of law when it addresses ambiguity in the statute or fills a space in the enacted law," such that *Chevron* deference is appropriate. See *United States* v. *Mead Corp.*, No. 99-1434 (June 18, 2001), slip op. 9. The Commissioner's assignments of beneficiaries are similar to other agency adjudications that have previously been granted *Chevron* deference. See *id.* at 11 (discussing *NationsBank of N.C., N.A.* v. *Variable Annuity Life Ins. Co.*, 513 U.S. 251 (1995)).

NBCWAs governing the terms of labor in the coal industry created in mine workers an expectation that signatory employers would contribute to maintaining health-care benefits for current retirees, and that the Benefit Plans would continue to provide comparable health-care benefits for current employees when they in turn retired. Many employers, however, dissolved their corporate structures and transferred their operating assets to other parties without making any further provision for the benefits that would eventually be claimed by their workers. As a result, the increasingly expensive responsibility for those employers' "orphan" retirees was "dumped" on the fewer and fewer mine operators that remained in business and remained within the NBCWA structure. See pp. 3-4, *supra*. The Commissioner's interpretation of the Coal Act liability to include a signatory's direct successor advances Congress's objective of ensuring that that situation is not reenacted, *i.e.*, that responsibility for retirees' health-care benefits is not foisted on other businesses with no connection to the retired beneficiaries—or on the public. See pp. 5, 27-28, *supra*.

Second, the principles adopted by the Commissioner for determining who will be considered a successor in interest to a signatory operator are reasonable. The Commissioner's Program Instructions emphasize the importance of the employment relationship in assigning statutory liability. Those Instructions provide that the signatory's direct successor in interest may be assigned premium obligations only as a "last resort," when the employing signatory is defunct, and when no affiliated company under common ownership or control with the signatory is in existence. See Supplemental Coal Act Review Instructions No. 4, § D (2) and (3) (Pet. App. 86a-87a). Thus, in a third-tier assignment like this one, the signatory's successor is assigned liability only when the employing signatory or an affiliated company cannot be found, and when the only alternative to imposing liability on

the signatory's successor would be to transfer benefit costs to the public fisc (the Abandoned Mine Reclamation Fund) or the collective responsibility of all other signatory operators, none of which had any relationship with the employees.

Third, the Commissioner's guidelines vindicate Congress's objective of ensuring that a signatory and its successor not be permitted to use private contractual arrangements to shield both parties from any further obligation to fund retirees' benefits. Successorship transactions that purported to relieve both the seller and the purchaser from any further obligation to fund retirement benefits were cited by the Coal Commission as a contributing cause of the financial crisis in the UMWA Benefit Plans and the resulting need for congressional intervention. See pp. 3-4, *supra*. The legislative history accordingly notes that related-person liability was to be construed broadly, so as to reach "successors to the collective bargaining agreement obligations of a signatory operator." 138 Cong. Rec. at 34,002 (explanation by Sen. Wallop). In concluding that the direct successor of a defunct signatory may be responsible for the signatory's liabilities under the Act, the Commissioner has construed the Act to remedy the very industry practice Congress intended to redress.

Fourth, the successorship principles applied by the Commissioner ensure that liability is confined to instances in which the successor bears a close nexus to the employment relationships and collective bargaining obligations of a now-defunct signatory, and may therefore reasonably be deemed the most responsible, extant party. The Commissioner assigns beneficiaries to a defunct signatory's successor only where the successor acquires substantial assets through purchase, merger, or similar transaction, where the successor continues running the same operation in the same location with little or no interruption in business, and where the successor uses many of the same employees who worked for

the former owner. Pet. App. 86a. The Commissioner thus applies to each assignment determination interpretive principles that limit liability to instances in which the successor has substantially continued the same business operation with most of the same employees as the employing signatory.

The court of appeals reasoned, however, that even those criteria were not sufficient to make a successor the party "most responsible" for funding the continued provision of retirees' benefits. The court noted that respondent Jericol had never actually employed the pertinent miners, and that any benefits conferred by the retired miners through their labor ran to their employer, the original Shackleford company and those in financial partnership with it, and thus did not inure to the benefit of an arm's-length purchaser of assets such as Jericol. Pet. App. 29a. The fact that the successor is not the actual employer of particular retired beneficiaries at issue, however, cannot be dispositive. While the employer may indeed bear a closer nexus to the funding problems that beset the industry's multiemployer benefit plans, the Coal Act funding scheme was enacted precisely because many such employers were out of business and could not be reached. Congress, in authorizing the imposition of related-person liability on a broad range of companies other than the signatory operator, made clear in the Act itself that premiums may be imposed on certain companies even if the specific assignee never had a direct and immediate employment relationship with the pertinent beneficiaries.

For all the foregoing reasons, the Commissioner's determination that a direct successor of a signatory operator may be made responsible for the Combined Fund premium obligations attributable to the signatory operator's employees is reasonable and consistent with the statute. The court of appeals' contrary ruling should therefore be set aside.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

Section 9701(c) of Title 26, United States Code, provides in pertinent part:

(c) Terms relating to operators

For purposes of this section—

* * * * *

(2) Related persons

(A) In general

A person shall be considered to be a related person to a signatory operator if that person is—

(i) a member of the controlled group of corporations (within the meaning of [26 U.S.C. 52(a)]) which includes such signatory operator;

(ii) a trade or business which is under common control (as determined under [26 U.S.C. 52(b)]) with such signatory operator; or

(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).